

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:04CV21-03-MU

FRANCISCO CURBELO,

Petitioner,

v.

JIM PENDERGRAPH et. al.,

Respondent.

ORDER

THIS MATTER comes before the Court on Plaintiff's Motion for an Extension of Time to File A Response to Defendants' Motion for Summary Judgment (Document No. 31) filed March 9, 2006. Plaintiff believes that his outgoing legal mail and other correspondence has been impeded and asks that this Court grant him an extension of time to file his opposition to Defendant's Motion for Summary Judgment. However, this Court received Plaintiff's "Response to Defendant's Motion in Opposition of Summary Judgment" on March 14, 2006 (Document No. 30). Since the Court has received Plaintiff's response on March 14, 2006, Plaintiff's request for additional time to file a response to Defendant's Motion for Summary Judgment is DENIED as moot.

In the instant motion, Plaintiff also asks this Court to consider appointing Spanish speaking counsel to represent him. Appointment of counsel under § 1915(e)(1) in cases brought under 42 U.S.C. § 1983 is discretionary. Whisenant v. Yuan, 739 F.2d 160, 163 (4th Cir. 1984). Counsel should be appointed in "exceptional circumstances." Id.; Cook v. Bounds, 518 F.2d 779 (4th Cir. 1975). The existence of "exceptional circumstances" depends upon two factors: type and complexity of case and ability of pro se litigant to present case. Whisenant, 739 F.2d at 163. At this time, the

Court does not construe this as a complex case and notes that the Plaintiff is adequately representing himself.

IT IS HEREBY ORDERED that Plaintiff's Motion for an Extension of Time to file a Response to Defendant's Motion for Summary Judgment is **DENIED as Moot** and Plaintiff's request for the Appointment of Counsel is **DENIED**.

SO ORDERED.

Signed: March 20, 2006

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

